

106TH CONGRESS
2D SESSION

H. R. 4148

To make technical amendments to the provisions of the Indian Self-Determination and Education Assistance Act relating to contract support costs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 2000

Mr. YOUNG of Alaska (for himself and Mr. HAYWORTH), introduced the following bill; which was referred to the Committee on Resources

A BILL

To make technical amendments to the provisions of the Indian Self-Determination and Education Assistance Act relating to contract support costs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Contract Sup-
5 port Cost Technical Amendments of 2000”.

1 **SEC. 2. AMENDMENT DETAILING CALCULATION AND PAY-**
2 **MENT OF CONTRACT SUPPORT COSTS.**

3 The Indian Self-Determination and Education Assist-
4 ance Act is amended by adding after section 106 the fol-
5 lowing new section:

6 **“SEC. 106A. CONTRACT SUPPORT COSTS.**

7 “(a) OTHER FEDERAL AGENCIES.—Notwithstanding
8 any other provision of law (including regulation or cir-
9 cular), an Indian tribe or tribal organization administering
10 a contract or compact under this Act shall be entitled to
11 recover its full indirect costs associated with any other
12 Federal funding received by such tribe or tribal organiza-
13 tion, consistent with the tribe’s or tribal organization’s in-
14 direct cost rate agreement with its cognizant Federal
15 agency.

16 “(b) ALLOWABLE USES OF FUNDS.—Notwith-
17 standing any other provision of law (including regulation
18 or circular), an Indian tribe or tribal organization admin-
19 istering a contract or compact under this Act shall be enti-
20 tled to use or expend any other Federal funding received
21 by such tribe or tribal organization in the same manner
22 as permitted in subsections 106(i) and (j) (relating to the
23 use of funds for matching or cost participation require-
24 ments and allowable uses of funds without approval of the
25 Secretary), and for such purposes the term ‘Secretary’

1 shall mean the Secretary of any Federal agency providing
2 funds to such tribe or tribal organization.

3 “(c) OFFICE OF MANAGEMENT AND BUDGET CIR-
4 CULAR.—Not later than 24 months after the date of en-
5 actment of this Act, the Office of Management and Budg-
6 et shall issue a circular exclusively devoted to the expendi-
7 ture of Federal funds paid to tribes and tribal organiza-
8 tions under this or any other Federal law. In publishing
9 such circular the Office of Management and Budget shall
10 employ the procedures described in subsections 107(d)(1),
11 107(d)(2)(A), 107(d)(2)(B), and 107(d)(2)(D) and the
12 references therein to the Secretary shall for such purposes
13 include the Director of the Office of Management and
14 Budget.

15 “(d) CONSOLIDATED CONTRACT AMOUNT.—

16 “(1) CONDITIONS FOR CONSOLIDATION.—Com-
17 mencing in fiscal year 2002, the Secretary shall con-
18 solidate all funds paid to a tribe or tribal organiza-
19 tion pursuant to subsections 106(a)(1) and (2) into
20 a single consolidated contract amount, provided that
21 the following conditions have been met:

22 “(A) The tribe or tribal organization quali-
23 fies as a mature contractor under title I or is
24 operating a self-governance agreement under
25 title III or IV.

“(B) The tribe’s or tribal organization’s indirect cost rate has not varied more than 10 percent over the prior year’s rate for the preceding 3 years (for tribes or tribal organizations that have no indirect rate, this criterion shall be satisfied if the actual payment of contract support costs to the tribe or tribal organization has not varied more than 10 percent over the prior year’s amount for the preceding 3 years).

“(C) At the time of the consolidation the tribe or tribal organization is receiving the full amount of contract support costs to which it is entitled under section 106(a)(2).

“(2) MEDICAL INFLATION RATE ADJUSTMENTS.—Each year following the consolidation required by paragraph (1), the Secretary of Health and Human Services shall increase the amount of contract support costs paid as part of the consolidated amount by a amount equal to (i) the adjustment in the medical care component of the consumer price index over the preceding year multiplied by (ii) the contract support cost amount paid in the preceding year as part of the consolidated amount.

“(3) CONSUMER PRICE INDEX ADJUSTMENTS.—Each year following the consolidation re-

1 quired by paragraph (1), the Secretary of the Inte-
2 rior shall increase the amount of contract support
3 costs paid as part of the consolidated amount by an
4 amount equal to (i) the adjustment in the consumer
5 price index over the preceding year multiplied by (ii)
6 the contract support cost amount paid in the pre-
7 ceding year as part of the consolidated amount.

8 “(4) EMPLOYMENT ADJUSTMENTS.—A tribe or
9 tribal organization shall be entitled to receive addi-
10 tional contract support costs associated with the
11 transfer of employees from Federal employment to
12 tribal employment. Such additional contract support
13 costs shall be added to the consolidated contract
14 amount determined and adjusted under paragraphs
15 (1), (2), and (3), and shall thereafter become a part
16 of the consolidated amount.

17 “(5) ADDITIONAL CONTRACT SUPPORT
18 COSTS.—Notwithstanding any other provision of this
19 Act, and except as provided in paragraphs (4) and
20 (9), the tribe or tribal organization shall not be enti-
21 tled to receive any contract support costs additional
22 to those contained within the consolidated contract
23 amount determined and adjusted under paragraphs
24 (1), (2), and (3).

1 “(6) LIABILITY FOR OVERPAYMENT OF INDI-
2 RECT COSTS.—Notwithstanding any other provision
3 of this Act, the tribe or tribal organization shall not
4 be held liable for any actual or theoretical overpay-
5 ment of indirect costs or other adverse adjustment
6 associated with the calculation of indirect cost rates
7 or the payment of indirect costs.

8 “(7) REBUDGETING AUTHORITY UNAF-
9 FECTED.—The tribe or tribal organization may re-
10 budget all contract funds as specified in section
11 106(n).

12 “(8) DECONSOLIDATION.—Except as provided
13 in paragraph (9), in the event the amount of pro-
14 gram funds paid under section 106(a)(1) as part of
15 the consolidated amount, when combined with other
16 program funds paid to the tribe or tribal organiza-
17 tion from other funding sources, increases or de-
18 creases by more than 20 percent over the amount
19 paid in the preceding year, the amounts paid by the
20 Secretary under this section shall be deconsolidated,
21 and such amounts shall be recalculated and paid as
22 specified elsewhere in this Act. Upon such recalcula-
23 tion, the recalculated amounts shall be reconsoli-
24 dated into a single amount as otherwise described in
25 this subsection.

1 “(9) CONTRACTING ADDITIONAL PROGRAMS.—

2 Nothing in this subsection shall affect the right of
3 a tribe or tribal organization to contract or compact
4 for the operation of additional programs not in-
5 cluded in the consolidated amount paid under para-
6 graph (1), or to be paid the full amount of contract
7 support costs associated with such additional con-
8 tracted or compacted programs, as provided in sec-
9 tion 106(a)(1) and other provisions of this Act. Any
10 such additional programs and associated contract
11 support costs shall be added to the consolidated
12 amount determined and adjusted under paragraphs
13 (1), (2), and (3).

14 “(e) NEGOTIATION OF CONTRACT SUPPORT COST
15 AMOUNTS.—Within the Indian Health Service of the De-
16 partment of Health and Human Services, the negotiation,
17 review, and approval of tribal contract support cost enti-
18 tlements shall be the responsibility of the Office of Tribal
19 Programs.

20 “(f) DIRECT CONTRACT SUPPORT COSTS AND FED-
21 ERAL EMPLOYEES.—The contract support costs that are
22 eligible costs for the purposes of receiving funding under
23 this Act shall include contract support costs associated
24 with all Federal employees employed in connection with
25 the program, service, function, or activity that is the sub-

ject of the contract, including all Federal employees paid with funds generated from third-party collections.”.

**SEC. 3. AMENDMENTS CLARIFYING CONTRACT SUPPORT
COST ENTITLEMENT.**

The Indian Self-Determination and Education Assistance Act is amended—

(1) in section 105(c)(1), by striking the last flush sentence;

(2) in section 106(b)—

(A) by striking “the provision of funds under this Act is subject to the availability of appropriations and”; and

(B) by adding at the end thereof the following flush sentence:

“Necessary amounts are appropriated to pay contract support costs when not otherwise provided for.”;

(3) in section 1(b)(4) of the model contract set forth in section 108(c), by striking “Subject to the availability of appropriations, the” and inserting “The”;

(4) in section 106(a)(5) by adding at the end thereof the following flush sentence:

“Notwithstanding any other provision of law, the Secretary shall pay preaward and startup costs without regard to the year in which such costs were incurred, includ-

1 ing such costs incurred prior to the date of the enactment
2 of this sentence.”;

3 (5) in section 106, by redesignating subsections
4 (c) through (n) as subsections (d) through (o), re-
5 spectively; and

6 (6) by reenacting section 106(c) as in effect on
7 November 9, 1998.

8 **SEC. 4. AMENDMENT ENLARGING CONTRACT PROPOSAL**
9 **REVIEW PERIOD.**

10 Section 102(a)(2) of the Indian Self-Determination
11 and Education Assistance Act is amended—

12 (1) by striking “ninety” in the second sentence
13 and inserting “180”; and

14 (2) by striking “90-day” in the third sentence
15 and inserting “180-day”.

16 **SEC. 5. AMENDMENTS REGARDING JUDICIAL REMEDIES.**

17 (a) Section 110 of the Indian Self-Determination and
18 Education Assistance Act is amended by adding at the end
19 the following new subsections:

20 “(f) **EQUAL ACCESS TO JUSTICE ACT.**—In applying
21 the Equal Access to Justice Act to proceedings instituted
22 pursuant to this Act, a tribe or tribal organization shall
23 be a ‘party’ regardless of the net worth or the size of the
24 workforce of such tribe or tribal organization.

1 “(g) REPAYMENT OF DAMAGE AWARDS.—In the
2 event damages are awarded in any proceeding where a
3 court or administrative agency determines that an agency
4 has willfully failed to follow the mandates of this Act, the
5 court shall award the injured tribe or tribal organization
6 additional damages equal to the amount of damages
7 awarded by such court in favor of the tribe or tribal orga-
8 nization, or \$10,000, whichever is greater.”.

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